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July 21, 2006

Robert Tietjen, Esq.
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10 North Pearl Street, 4th Floor
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VIA FAX AND MAIL

Re: Priddis Music, Inc. vs. Transworld Entertainment Corporation
Case Number: 05-CV-0491 DNH/DRM

Dear Mr. Tietjen:

This letter is sent in partial response to your letter of July 19, 2006 to Magistrate Judge David Homer.

That letter sought a conference to resolve discovery issues so that Defendant need not file a motion to compel disclosure based on the alleged insufficiency of Plaintiff's responses to Defendant/Counter Claimant's First Set of Interrogatories and Request for Production. It is most ironic that the same concerns that you raised in this letter, and your initial "discover issues" letter of May 5, 2006 relating to the inadequacy of Priddis' responses likewise applies to your own client's response to interrogatories and discovery requests submitted to our office. In the paragraphs below, I will detail those particular issues in which the interrogatory responses and document production of Transworld Entertainment Corporation ("TWEC") are inadequate.

Notwithstanding the issues and deficiencies set forth below, we remain prepared to adhere to the amended disclosure schedule of this case by producing our witnesses within the time-frame previously set by the Court. We have not provided a series of letters concerning these points due, in part, to the assurance (see below) provided by TWEC that it was conducting a search for much of Plaintiff's requested document production. To date, however, we have not seen any results from such a search.

INTERROGATORY RESPONSES

TWEC response to Interrogatory Number 1

The only date provided in response is one date when it is alleged that the Plaintiff authorized the return of a certain product with a single authorization number, which date is responsive only to Interrogatory Number 1(b). No dates are provided with respect to Interrogatory 1 (a). To date,

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Defendant has neither provided a list of the product that TWEC attempted to return nor furnished a reason why it would attempt to return the product.

TWEC response to Interrogatory Number 2.

In response to Interrogatory Number 2, the Defendant identified the dollar amount of one single return in or about March 2004. Plaintiff has already produced documents concerning multiple return of product, which pages are bate stamped Priddis003360 to Priddis005755. Defendant has failed to provide responses to Interrogatory 2(b), 2(c) and 2(d).

TWEC response to Interrogatory Number 3.

Defendant has provided no response to Interrogatories 3 (a) - 3 (e).

TWEC responses to Interrogatory Number 4.

To date, TWEC has failed to provide either a dollar value as sought in Interrogatory 4 (a), a loss-profits figure [Interrogatory 4 (b)] nor the dollar value of replacement product [Interrogatory 4(c)]. Rather, TWEC merely promises to conduct a search and possibly produce documents to identify TWEC's damages as alleged in its counterclaim.

TWEC responses to Interrogatory Number 5.

No answer whatsoever is provided to this Interrogatory.

TWEC responses to Interrogatory Number 6.

Other than general objections, no answer whatsoever is provided to this Interrogatory.

TWEC responses to Interrogatory Number 7.

No answer whatsoever is provided to this Interrogatory.

DOCUMENT PRODUCTION

As you no doubt are aware, the language of Federal Rule 33(d) specifically provides that such productions shall be as the records are kept in the usual course of business or shall organize and label (the records) to correspond with the categories of the request. The response provided clearly does not conform to the latter provision. It is somewhat questionable that such records are kept in the usual course of business in the non-chronological and dis-organized fashion produced to us.

TWEC has produced documents bate stamped TWEC00001 - TWEC002457. Yet in connection with the 29 document requests propounded by Plaintiff on May 4, 2006, there is not a single pinpoint reference to any particular page(s) set forth in the "response" of the Defendant dated

April 7, 2006. Moreover, most of TWEC's responses contain several boilerplate objections, including an assertion that Priddis' requests are " vague, ambiguous, over-broad and unduly burdensome". This objection is stated in response to 20 of Plaintiff's 29 document requests. Second, an objection that documents sought are "as accessible to Plaintiff as to TWEC" appears in response to 8 of the 29 document requests. Third, TWEC objects to document requests as " irrelevant and not reasonably calculated to lead to the discovery of admissible evidence " with respect to 14 of the 29 of Priddis' document requests. Finally, TWEC asserts that it will conduct a " search of reasonable scope" and produce documents as a response to 23 of 29 Priddis' document requests.

Notably, Plaintiff has yet to receive any supplemental documentary disclosure from the Defendant other than Defendant's disclosure of documents this Spring bates stamped TWEC000240- TWEC002457. By contrast, since the initial service on TWEC of interrogatories and document requests by each side, Plaintiff has made two supplemental documentary productions to TWEC. The following comments concerning some of the documents responses provided by the Defendant are specific.

TWEC response to Priddis request number 1.

This is the identical production demand presented by TWEC to Plaintiff and for which TWEC persistently has objected to Plaintiff's response as being inadequate and overly broad. To date TWEC has failed to produce or identify any non-privileged documents and, consequently, this production request remains un-answered.

TWEC response to Priddis request number 2.

Defendant makes no effort to identify any documents in response to this request.

TWEC response to Priddis request number 3.

TWEC fails to identify, by bates stamp number, or any other means, those documents responsive to this request. Notwithstanding this failure, among the documents in TWEC's document production (TWEC bates-stamped documents TWEC000240 - TWEC000683), are print outs of electronic mail messages between the parties and/or correspondence between the parties.

TWEC response to Priddis request number 4.

TWEC fails to identify, by bates stamp number, or any other means, any of the documents within the 2,457 document pages that it has produced such documents as are responsive to this interrogatory, nor has it produced any further documents since the service of Plaintiff's document production request.

TWEC response to Priddis request number 5.

Defendant's response is entirely inadequate and does not even attempt to reference some of the documents already produced by the Defendant, i.e., some portion of TWEC0001 - TWEC002457.

TWEC response to Priddis request number 7.

Plaintiff's objections are evasive at best inasmuch as there is nothing vague about Priddis' request for copies of "purchase orders" between the parties when the subject matter of litigation concerns the provisions of a vendor agreement for the purchase of karaoke products by TWEC from Priddis.

TWEC response to Priddis request numbers 8, 10, 11, and 12.

TWEC has asserted that it has the right to make unlimited returns of product to the Plaintiff, yet it is unable (unwilling?) to produce any documents relative to its return of product to Defendant. By contrast, Defendant posed the same question to Plaintiff and expects a response.
See Defendant / Counter Claimant-Plaintiff document request number 8. This same inadequate response is provided to TWEC's responses to Priddis request numbers 10, 11, and 12. At the time of submission of these document requests, Plaintiff already had served Defendant with initial disclosure that included hundreds of pages of product return documents, charge-back records and electronic mail communications, yet Defendant's own position is that the request for such information is overly broad and unduly burdensome.

TWEC response to Priddis request number 13.

Defendant's relevancy objection to this particular document request is entirely inappropriate given that, as understood by Plaintiff, one of TWEC's legal defenses is the assertion that it enjoys a right of unlimited return of Product ordered from Plaintiff.

TWEC response to Priddis request number 14.

Once again, TWEC's relevancy objection to this document request is included as boiler plate. It is entirely inappropriate inasmuch as the document request relates to a specific issue in the case, i.e. the ordering practices and policies of TWEC as related to its purchase of Product from Plaintiff.

TWEC response to Priddis request number 15.

TWEC's relevancy objection is inappropriate once again inasmuch as TWEC's payment policies and procedures are directly at issue in this case.

TWEC response to Priddis request number 16.

As with previous inadequate responses, this response doe not even attempt to identify, as even a partial response thereto, those documents submitted by Plaintiff to Defendant (as part of Plaintiff's initial production), which are comprised of a range of several thousand charge-back documents relating to orders, purchases and returns.

TWEC response to Priddis request number 17, 18 and 19.

Despite Judge Hurd's Fall 2005 Decision that reduced Plaintiff's actionable claims, Plaintiff's cause of action for goods sold and delivered survives. These interrogatories go to the substance of those claims.

TWEC response to Priddis request number 21.

It is assumed that TWEC intended to object to providing responsive documents by stating that the request does not identify with reasonable particularity the documents of which Plaintiff speaks. Plaintiff cannot identify with particularity those documents exclusively in the Defendant's possession; that is why it is incumbent upon Defendant to produce those documents which relate to the request made by Plaintiff. It would appear that you have not adequately reviewed the documents provided by your client (TWEC00240 - TWEC00683), as several of those documents reference the "basic program" (TWEC00242, TWEC00248, TWEC00250, TWEC00470 and TWEC00485). It also is referred to in documents provided to you by Plaintiff (Priddis 00307 and Priddis 00491).

In summary, the specific and general objections offered by your client with respect to Priddis' interrogatories and document production, including the often used "overly broad and unduly burdensome" objection, ring hollow when compared with the detail asked of , and provided by, Plaintiff to the Defendant's own interrogatories and document production requests. The list of pin point citations to bate stamped documents in Plaintiff's responses is too numerous to repeat in this letter. A comparison of the document requests tendered by each side demonstrates that Plaintiff's Document Request Number 1 is virtually identical to Defendant's Document Request Number 1 (documents used in composing Interrogatory Responses). The parties comparative answers, however, differ greatly. Likewise, Plaintiff's Document Request Number 2 is virtually identical to that set forth in Defendant's Document Request Number 4 (request for agreements between TWEC and Plaintiff). The responses provided differ greatly. Plaintiff provided numerous pin point citations to particular pages within documents provided in the case. Defendant provided no documents.

Yet another stark comparison may be made between Plaintiff's Document Request Number 8 and Defendant's Document Request Number 5 (documents relating to return of product). Plaintiff's response contains numerous pin point citations to documents in the case; the Defendant's response consists only of several boilerplate objections.

Among the pages of document disclosure provided to Plaintiff by Defendant are many pages of spreadsheets or charts. These spreadsheets and charts are not identifiable by any markings contained thereon. Rather, Plaintiff intends to seek an explanation for the purpose and content of the various charts and documents offered by Defendant by posing questions relating to such documents in the course of its deposition of representatives of the Defendant.

We are prepared to go forward with depositions next week. Our clients are flying into town from Utah. In the forthcoming conference with Judge Homer we will underscore the contrast between the detail of Priddis' answers and the evasiveness of TWEC's answers. We shall note the 3 to 1 margin of document disclosure by Priddis to date and the absence of any supplemental production by TWEC since April 2006.

Thank you for your consideration of the above.

Very truly yours,

McNamee, Lochner, Titus and Williams, P.C.

Kenneth L. Gellhaus

KLG/tlw

cc Magistrate Judge David Homer
Michael Hall, Esq.
Priddis Music